



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-77,977-01

EX PARTE OCTAVIO BONILLA ORTIZ, Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. CR01475 IN THE 84TH DISTRICT COURT
FROM HANSFORD COUNTY**

Per curiam.

ORDER

Pursuant to the provisions of Article 11.07 of the Texas Code of Criminal Procedure, the clerk of the trial court transmitted to this Court this application for a writ of habeas corpus. *Ex parte Young*, 418 S.W.2d 824, 826 (Tex. Crim. App. 1967). Applicant pleaded guilty to possession of a controlled substance and was originally given five years' community supervision. His community supervision was later revoked, and he was sentenced to five years' imprisonment. The Seventh Court of Appeals affirmed his revocation and conviction. *Ortiz v. State*, No. 07-09-00263-CR (Tex. App. – Amarillo, May 16, 2011, *no pet.*).

This Court initially dismissed Applicant's habeas application, because the record contained no evidence that Applicant's community supervision had been revoked. However, Applicant has

since provided the Court with copies of the judgment revoking community supervision and the appellate opinion. Therefore, this Court hereby reconsiders the dismissal of the application and will consider the merits of Applicant's claims.

Applicant contends that his trial counsel rendered ineffective assistance because counsel refused to file a motion to suppress, and because counsel failed to advise him that he would be deported as a result of this conviction. Applicant alleges that counsel advised him that he "could" be deported. Applicant alleges that he would not have pleaded guilty had he know that he would definitely be deported as a result of this conviction.

Applicant has alleged facts that, if true, might entitle him to relief. *Strickland v. Washington*, 466 U.S. 668 (1984); *Ex parte Patterson*, 993 S.W.2d 114, 115 (Tex. Crim. App. 1999). In these circumstances, additional facts are needed. As we held in *Ex parte Rodriguez*, 334 S.W.2d 294, 294 (Tex. Crim. App. 1960), the trial court is the appropriate forum for findings of fact. The trial court shall order trial counsel to respond to Applicant's claim of ineffective assistance of counsel. The trial court may use any means set out in TEX. CODE CRIM. PROC. art. 11.07, § 3(d). In the appropriate case, the trial court may rely on its personal recollection. *Id.*

If the trial court elects to hold a hearing, it shall determine whether Applicant is indigent. If Applicant is indigent and wishes to be represented by counsel, the trial court shall appoint an attorney to represent Applicant at the hearing. TEX. CODE CRIM. PROC. art. 26.04.

The trial court shall first supplement the habeas record with copies of the plea documents, including the written admonishments, waivers and stipulations, and any plea agreement. The Court shall also supplement the record with a transcription of the plea proceedings. The trial court shall then make findings of fact and conclusions of law as to whether Applicant was advised of the

immigration consequences of his plea, and specifically as to whether Applicant was advised that he could be deported as a result of this conviction, or that he would definitely be deported as a result of the conviction. The trial court shall make findings as to whether the performance of Applicant's trial counsel was deficient and, if so, whether counsel's deficient performance prejudiced Applicant. The trial court shall also make any other findings of fact and conclusions of law that it deems relevant and appropriate to the disposition of Applicant's claim for habeas corpus relief.

This application will be held in abeyance until the trial court has resolved the fact issues. The issues shall be resolved within 90 days of this order. A supplemental transcript containing all affidavits and interrogatories or the transcription of the court reporter's notes from any hearing or deposition, along with the trial court's supplemental findings of fact and conclusions of law, shall be forwarded to this Court within 120 days of the date of this order. Any extensions of time shall be obtained from this Court.

Filed: September 12, 2012
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